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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,692	02/16/2002	Jose E. Leal		1457
7590	04/21/2004			
Joseph Funk 82 Chase Road Londonderry, NH 03053			EXAMINER BROCKETTI, JULIE K	
			ART UNIT 3713	PAPER NUMBER

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/076,692

Applicant(s)

LEAL ET AL.

Examiner

Julie K Brockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "45" and "46" have both been used to designate a small container holding a transmitter. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because Figure 1 shows 3 individual pieces of the invention. Label "10" cannot be used to label all 3 views. It is suggested that they be separated into Figure 1A, Figure 1B and Figure 1C. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure

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sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The disclosure is objected to because of the following informalities:

1. Page 3 line 21 "15a-15f" should be "15a-15g".
2. Page 1 line 24 the word "peace" should be "piece".

Appropriate correction is required.

### ***Claim Objections***

Claims 3, 7, 9, 14, 16, 18 and 19 are objected to because of the following informalities:

1. Claims 3 and 7 state "the signals" however, in the claims on which they depend, "signal" is singular and not pluralized, therefore in claims 3 and 7, need to be rewritten to read, "wherein the signal is..."

2. Claim 9 states "toward individual". The word "the" or "said" needs to be inserted before "individual".

3. Claims 14, 16 and 19 state "individuals voice" it should read "individual's voice".

4. Claim 18 states "with claim 9 2 further..." The number "9" needs to be deleted. Based on a conversation with the attorney claim 2 was used in this claim for examination purposes.

5. Claim 18 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 15. Claim 25 is a duplicate of claim 22. Claim 26 is a duplicate of claim 21. Claim 30 is a duplicate of claim 29. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Consequently, claims 18, 25, 26 and 30 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The Examiner notes that all of these duplicate claims are in the same dependency chain and therefore do not further limit the parent claim.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 13, 15, 18, 20 and 21 are rejected under 35**

**U.S.C. 102(e) as anticipated by or, in the alternative, under 35**

**U.S.C. 103(a) as obvious over Brown, U.S. Patent No. 6,440,013 B1.** Brown discloses a method for an individual to have hitting practice and hitting practice training equipment for use by an individual. The equipment includes a game piece to be hit by the equipment user as part of hitting practice for example a ball (See Brown col. 2 line 54). A pitching machine is used to propel the game piece (See Brown Fig. 1A, abstract). It is implicit to the system that there is a means for striking a game piece propelled by the propelling means to impose a force by the striking means against the game piece. For example Brown discloses that his pitching machine is used for batters in batting practice. Therefore, it is implicit that the batters have bats for striking the balls and when the batters do strike the balls with the bats a force is imposed against the balls. However, if it is not implicit that the batters described in Brown have bats it is certainly obvious under 35 U.S.C. 103. One of ordinary

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skill in the art at the time the invention was made would know that a batter would have a striking means, i.e. a bat, for striking a game piece, i.e. ball, thereby imposing a force by the striking means against the game piece. A pitching machine to be used by batters is not helping the batters unless they have a bat to practice hitting the balls with. Consequently, a batter would use a bat and pitching machine together in order to improve their batting ability. Brown further discloses a transmitter being separate from the striking means and the hands of the individual. The transmitter is used to transmit a signal that causes a game piece to be propelled by the propelling means. The transmitter is operated by the individual using the training equipment (See Brown Fig. 4A, col. 4 lines 17-19; col. 8 lines 47-63; col. 9 lines 44-58) [claims 1, 20]. A receiver is used for receiving the transmitted signal. The receiver causes the actuation of the propelling means to propel a game piece to be hit by the individual using the striking means (See Brown col. 8 lines 54-57) [claim 2]. The signals are transmitted on a wireless basis to the receiver (See Brown col. 8 lines 54-57) [claim 3]. The remote control allows for selectively controlling the transmitter to transmit ones of a plurality of signals that the receiver and the propelling means respond to and propel a game piece in a different manner for each one of the plurality of signals (See Brown col. 3 lines 63-67; col. 9 lines 44-58) [claims 13, 15, 18, 27]. The individual causes the transmission of the signal when they are ready to attempt hitting a propelled game piece (See Brown col. 9 lines 44-54) [claims 21, 26].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Lipps, U.S. Patent No. 5,741,182.** Brown further discloses that the game piece is a ball (See Brown col. 3 line 67) and as previously stated it is either implicit that the striking means is a bat or it is certainly obvious for the reasons stated above (See Brown col. 2 line 67; col. 3 lines 1-8) [claims 4, 12]. Brown lacks in disclosing that a home plate contains the transmitter [claims 4, 12, 24]. Lipps teaches of a baseball game, which uses a bat and a home plate. The home plate contains a transmitter and the transmitter is actuated to send the transmitted signal by touching the home plate (See Lipps Fig. 2; col. 3 lines 46-52, 63-67) [claims 4, 12, 24]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a home plate containing the transmitter in the invention of Brown. When players take batting practice they like to stand in front home plate in order to get the feel of a real "at-bat". Furthermore, it is obvious that one could place the transmitter in the plate as in Lipps so that players could



control the buttons on the controller by using their bat or their hands. It is well known for batters to tap home plate prior to batting; therefore, by having the transmitter in home plate, players could simply do the same actions as they would in a normal batting situation while also actuating the propelling mechanism.

**Claims 10, 11, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Sharp, U.S. Patent No.**

**5,133,330.** Brown teaches that the signals are transmitted on a wireless basis to the receiver (See Brown col. 8 lines 47-63) [claim 11]. Brown further discloses that the game piece is a ball (See Brown col. 3 line 67) and as previously stated it is either implicit that the striking means is a bat or it is certainly obvious for the reasons stated above (See Brown col. 2 line 67; col. 3 lines 1-8) [claim 23]. Brown lacks in disclosing a delay in the actuation of the propelling means [claims 10, 22]. Sharp teaches of a pitching machine in which when the machine receives the signal to cause the actuation of the propelling means to propel a game piece a delay occurs for a short period of time (See Sharp abstract, col. 1 lines 52-54; col. 2 lines 30-34) [claims 10, 22]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a delay after the receiver receives the transmitted signal in Brown so that the actuation of the propelling means is delayed. By delaying the throwing of the balls, the players can get into their batting stance

and be ready for the pitch versus being surprised immediately by balls being thrown at them.

**Claims 14, 16, 17, 19, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Trajkovic et al., U.S. Patent No. 6,539,931.** Brown lacks in disclosing a voice activated means [claims 14, 16, 17, 19, 28-30]. Trajkovic teaches of a ball throwing assistant comprising voice activated means that responds to the individual's voice for causing the propelling means to respond and propel a game piece in a different manner for each one of the plurality of voice actuated signals (See Trajkovic col. 5 lines 5-15, 25-33) [claims 14, 16, 17, 19, 29, 30]. It would have been obvious at the time the invention was made to use voice actuated signals in the invention of Brown so that the transmitter could transmit a signal to the receiver and the propelling means in response to a voice signal by the user. By using voice signals, the player's hands are free to hold the bat and maintain the batting stance. Consequently, the player can concentrate on batting and his physical position rather than pressing the correct buttons on a remote control.

**Claims 5, 12 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Lipps, in further view of Sharp, U.S. Patent No. 5,133,330.** Brown and Lipps lack in specifically disclosing a delay in the actuation of the propelling means [claim 5]. Sharp teaches of a pitching machine in which when the machine receives the signal to cause the actuation of the propelling means to propel a game piece a delay occurs for a short period

of time (See Sharp abstract, col. 1 lines 52-54; col. 2 lines 30-34) [claims 5, 25]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a delay after the receiver receives the transmitted signal in Brown so that the actuation of the propelling means is delayed. By delaying the throwing of the balls, the players can get into their batting stance and be ready for the pitch versus being surprised immediately by balls being thrown at them.

**Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Lipps, in view of Sharp, in further view of Trajkovic et al., U.S. Patent No. 6,539,931.** Brown, Lipps and Sharp lack in disclosing a voice activated means [claim 28]. Trajkovic teaches of a ball throwing assistant comprising voice activated means that responds to the individual's voice for causing the propelling means to respond and propel a game piece in a different manner for each one of the plurality of voice actuated signals (See Trajkovic col. 5 lines 5-15, 25-33) [claim 28]. It would have been obvious at the time the invention was made to use voice actuated signals in the invention of Brown so that the transmitter could transmit a signal to the receiver and the propelling means in response to a voice signal by the user. By using voice signals, the player's hands are free to hold the bat and maintain the batting stance. Consequently, the player can concentrate on batting and his physical position rather than pressing the correct buttons on a remote control.

**Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Weske et al., U.S. Patent No.**

**6,575,837 B1.** Brown discloses that the transmitter is located apart from the striking means and the hands of the individual and that the individual actuates the transmitter to transmit the signal that causes the game piece to be propelled by the propelling means [claim 6]. Furthermore, the signals are transmitted on a wireless basis to the receiver (See Brown col. 8 lines 47-63) [claim 7]. Brown lacks in disclosing the transmitter located on the individual [claim 6]. Weske et al. teaches of a fencing game in which a transmitter is located on the individual (See Weske et al. col. 3 lines 34-38) [claim 6]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the batter in Brown wear the transmitter as in Weske. By wearing the transmitter, the batter does not have to constantly pick up and put down the remote control device. The transmitter is on them at all times and the pitches can be selected faster versus picking up and using the remote control.

**Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Weske in further view of Sharp, U.S. Patent No. 5,133,330.** Brown further discloses that the propelling means is intended to propel the game piece toward the individual with the striking means (See Brown col. 2 lines 63-67; col. 3 lines 1-8) [claim 9]. Brown and Weske lack in disclosing a delay in the actuation of the propelling means [claim

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8]. Sharp teaches of a pitching machine in which when the machine receives the signal to cause the actuation of the propelling means to propel a game piece a delay occurs for a short period of time (See Sharp abstract, col. 1 lines 52-54; col. 2 lines 30-34) [claim 8]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a delay after the receiver receives the transmitted signal in Brown so that the actuation of the propelling means is delayed. By delaying the throwing of the balls, the players can get into their batting stance and be ready for the pitch versus being surprised immediately by balls being thrown at them.

### ***Citation of Relevant Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Ragoza et al., U.S. Patent No. 6,244,260 B1.

--Ragoza discloses a striking means for striking objects propelled from an apparatus. A signal is sent to the propelling apparatus to inform it to propel the objects.

2. Kovacs et al., U.S. Patent No. 5,125,653.

--Kovacs discloses a ball throwing machine wherein a microcomputer remotely located from the machine controls the throwing machine.

3. Rappaport et al., U.S. Patent No. 6,190,271 B1.

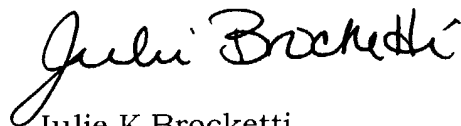
--Rappaport discloses a pitching machine and a striking means with a transmitter for sending signals to the pitching means.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 703-308-7306. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie K Brockett  
Examiner  
Art Unit 3713